

DETAILED ACTION - ALLOWANCE

Claim Status

Applicants' amendment filed August 20, 2009, in response to the non-final Office action dated April 21, 2009 has been entered. Claim 8 has been amended. No claims were cancelled or newly added. Accordingly, claims 1-8 remain pending in the application.

Claim 8 was previously objected to for containing a minor typographical error: Applicants have corrected the error in the claim, thus the objection is hereby withdrawn.

Claim 5 was previously rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants' argument that persons skilled in the art would recognize that blood unit volume can be varied, but that there is a maximum, is found persuasive. Accordingly, the rejection is hereby withdrawn.

Claims 1-4, 6 and 7 were previously rejected under 35 U.S.C. §103(a) as being unpatentable over Erices et al. (Br. J. Hematol. 109:235-242; 2000), in view of Nishikawa et al. (U.S. Patent Application Publication No.: 2004/0235160; effective filing date: Aug. 7, 2002).

Claims 1, 5 and 8 were previously rejected under 35 U.S.C. §103(a) as being unpatentable over Erices et al. (Br. J. Hematol. 109:235-242; 2000), in view of Nishikawa et al. (U.S. Patent Application Publication No.: 2004/0235160; effective filing date: Aug. 7, 2002), as applied to claims 1-4, 6 and 7 above, and further in view of Goodwin et al. (Biol. Blood Marrow Transplant. 7:581-588; 2001).

Applicants have provided a Declaration under Rule 1.132 in support of the data presented in their disclosure, that the instantly claimed method, using the specific combination of growth factors, resulted in a 49 fold increase in the isolation of MSCs from umbilical cord blood, compared to conventional methods described by the cited references. In view of the unexpected superior results, the rejection is hereby withdrawn.

Claims 1-8 were previously rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent Application No: 10/579,071. In view of the Terminal Disclaimer filed November 16, 2009, the rejection is hereby withdrawn.

REASONS FOR ALLOWANCE:

The following is an examiner's statement of reasons for allowance:

As indicated in the Declaration under 37 CFR §1.132 by co-inventor Han, the prior art of record describing conventional methods of isolating and expanding mesenchymal stem cells from cord blood did not predict a 49 fold greater increase in the number of isolated and expanded cells using the specific combination of growth factors instantly claimed. Thus, such a finding is considered surprising and unexpected.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 1-8 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FEREYDOUN G. SAJJADI whose telephone number is (571)272-3311. The examiner can normally be reached on 6:30 AM-3:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Weitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fercydoun G Sajjadi/
Primary Examiner, Art Unit 1633